GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS (GACEC)
GENERAL MEMBERSHIP MEETING
7:00P.M., February 21, 2017
George V. Massey Station, Second Floor Conference Room
516 West Loockerman Street, Dover, DE

MINUTES

MEMBERS PRESENT: Chairperson Dafne Carnright, Carma Carpenter, Cathy Cowin, Bill Doolittle, Karen Eller, Terri Hancharick, Brian Hartman, Dana Levy, Karen McGloughlin, Mary Ann Mieczkowski, Beth Mineo, William O'Neill, Robert Overmiller, Jennifer Pulcinella, Shawn Rohe, Brenné Shepperson.

Guests: Eliza Hirst/Office of the Child Advocate, Pam Weir/DHSS Part C Assistant Coordinator, Annalisa Ekbladh/Autism Delaware, Mark Campano/DE Statewide Programs for Deaf, Hard of Hearing and Deaf Blind, Sandi Miller/Division of Vocational Rehabilitation.

Staff present: Wendy Strauss/Executive Director, Kathie Cherry/Office Manager, Sybil White/ Administrative Coordinator.

MEMBERS ABSENT: Chris McIntyre, Howard Shiber, Nancy Cordrey, Ann Fisher, Lisa Gonzon, Bernie Greenfield, Emmanuel Jenkins, Thomas Keeton, Sonya Lawrence, Carrie Melchisky.

Chairperson Dafne Carnright called the meeting to order at 7:25p.m. A **motion was made** to accept the February agenda as written. The **motion was approved**.

Public Comments: Mark Campano and Annalisa Ekbladh shared information on the upcoming Outside of the Box conference. The conference has grown in the last few years. They hope to continue to see growth as they expand and include not just the Deaf, Hard of Hearing and Deaf Blind communities but others as well. This year Autism Delaware has joined the effort. The conference offers guest speakers from both local and national organizations to provide information for parents, caregivers and professionals. The program is funded by several state agencies and outside fundraising efforts by the group. Mark and Annalisa encouraged members to check out the program and spread the word.

The next order of business included approval of the January 2017 minutes. A **motion was made** to accept them as written. The **motion was approved**. A **motion was made** to accept the January financial report as submitted. The **motion was approved**.

DOE Report

Mary Ann gave a presentation on the IDEA application process and what assurances the department is required to provide. The presentation is attached for your review.

Chair/Directors Report

Wendy asked Mary Ann if there was an update on significant disproportionality. The law passed in December and the Department is in the process of meeting with stakeholders. The law states it will be implemented by July 2019. Mary Ann explained that this is really not a lot of time because of the way the data is analyzed. Mary Ann offered to bring Tracy Neugebauer in to give an update on the process. Wendy announced that Bernie Greenfield lost his wife in January and asked for a moment of silence. Wendy shared the schedule for the capital improvement hearing (March 2, 2017 at 9:30). Wendy asked anyone who could to attend. Wendy also suggested writing a letter of support for the Department of Natural Resources and Environmental Control (DNREC). Robert made a **motion** to write a letter of support. The **motion was approved**. Wendy shared that the Heart 2 Heart Hugs campaign was once again a success. Over 1000 coats were collected, along with many other warm items. The Delaware State News reported on the event. The Disability History and Awareness month poster contest awards banquet was held in December. Over 300 posters were received and selecting winners was difficult. The whole event was a success. Wendy talked about the Department of Education Special Education Strategic Plan and asked Dafne or Bill to give a short update. Dafne was not at the last group meeting so she deferred to Bill. Bill shared that the strategies and goals have moved forward but there has been a serious glitch with the collaboration that he is not sure will be overcome. Wendy shared that there are additional meetings scheduled and she will keep Council posted on any updates. Wendy thanked Kathie and Sybil for keeping the office running in her absence. She also thanked Council for all that they do. Dafne announced that the GACEC budget hearing will be held on Thursday January 23rd at 1:30 p.m.

COMMITTEE REPORTS

ADULT TRANSITION SERVICES

The Adult Transition Services Committee joined the Children and Youth Committee for the presentation from Eliza Hirst.

CHILDREN AND YOUTH

The Committee met with Eliza Hirst from the Office of the Child Advocate to discuss the Compassionate Schools Learning Collaborative, Trauma & Impact of learning. Karen shared that Eliza discussed some of the strategies that are provided during the training. The discussion included

information about the collaborative and how it helps not only students, but professionals as well. Eliza shared that Stanton Middle school participated in the model and they have experienced a decline in their discipline issues. Eliza stated that many schools are volunteering and seem to be excited about the initiative. The training is ongoing and professional development is being provided to districts who participate.

INFANT AND EARLY CHILDHOOD

This committee met with Pam Weir, Assistant Part C Coordinator to get an update on the collaboration plan. Pam indicated to the committee that the draft was nearing completion and once completed, it will be sent out for review. Jennifer asked that a thank you letter be sent to Pam.

POLICY AND LAW

Brian Hartman reported that after review the recommendation of the committee is to comment on items 2-4 and 6-11 of the February 2017 Legal Memorandum. This came as a **motion from the Committee**. The **motion was approved**.

Commentary on the regulations was as follows:

2. DSS Proposed Purchase of Care-Licensed Exempt Provider Reg. [20 DE Reg. 614 (2/1/17)]

The Department of Health & Social Services published the original proposed version of this regulation in December, 2016. The GACEC submitted comments on the proposed regulation. DHSS is now reissuing the proposed regulation since it was inadvertently published as a DMMA initiative:

> DSS published this proposed regulation in the December 2016 Delaware Register. These regulations were erroneously published under the Division of Medicaid and Medical Assistance. In order to promote transparency and ensure that all applicable parties have an opportunity to participate in the public comment process, DSS has chosen to republish these regulations for further public review and comment.

At 615.

The February version of the regulation is identical to the December version with one (1) exception, i.e., the effective date is changed from February 11 to May 11, 2017. Therefore, the Councils' earlier comments remain apt subject to revising references to pages of the regulation and substituting "DSS" for "DMMA". The letter could be updated and resubmitted with the same attachments as follows:

As background, the federal Child Care and Development Block Grant funds child care for low income families who are working or participating in education or training activities. In 2016, new federal regulations were adopted which are prompting DMMA DSS to revise its provider standards. The changes will be effective on February May 11, 2017. At 413 614.

One significant change is curtailing the scope of providers exempt from licensing. At 414 615-616. Persons who come into the child's home and relatives who provide care in their own homes remain exempt from licensing. Id. However, the following entities would no longer be exempt:

(1) public or private school care;
(2) preschools and kindergarten care; and
(3) before and after school care programs.

DMMA DSS recites that "(t)he final rule requires that all providers receiving Purchase of Care (POC) funding must now be licensed, including those that were previously license exempt, in order to continue receiving POC funding." I could not verify the accuracy of this recital which, read literally, would disallow the exemption of persons coming into a child's home and relatives providing care in their homes. At 414 615. The federal regulation, with commentary, exceeds 600 pages so it is difficult to confirm the accuracy of the statement without extensive review. It is published at https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-22986.pdf . The attached federal regulations (§§98.2 and 98.40) do not categorically require Delaware to remove the current licensing exemption of the above 3 types of entities. However, §98.40 does require DHSS to describe the rationale for any exemptions in its Plan. The regulation does not provide the rationale for retaining the exemption for persons coming into a child's home and relatives who provide care in their home apart from a bare listing of some health and safety standards.

A second change is deletion of an authorization category of "double time (D) which is two days". At 415 617. The specific rationale for this change is also not provided.

Council did not identify any inconsistencies or facial issues in the proposed regulation. However, the following observations and recommendations may be submitted.

First, the regulation could be improved by including the rationale for retaining the 2 exemptions in §11004.4.1 consistent with the attached federal §98.40.

Second, GACEC recommends that DMMA DSS resolve the inconsistency between reciting that "all providers receiving Purchase of Care (POC) funding must now be licensed...." and still exempting 2 classes of providers.

Third, GACEC recommends that DMMA DSS provide the rationale for deleting the authorization category "double time (D) which is two days".

Thank you for your consideration and please contact GACEC if you have any questions or comments regarding our observations and recommendations on the proposed regulation.

3. DMMA Proposed Delaware Healthy Children Program Vision Coverage Reg. [20 DE Reg. 610 (2/1/17)]

Delaware implements the federal Child Health Insurance Program (CHIP) through the State of Delaware Healthy Children Program (DHCP). The DHCP provides health care services to children under age 19 whose families have countable income below 200% of the Federal Poverty Level (FPL). See DMMA Prop. Reg. 17-005b Amendment, §3.1.

The current proposal would expand vision services available to a subset of DHCP beneficiaries. In a nutshell, DMMA plans to contract with a non-profit Medicaid provider to offer free eye exams and glasses on site at Title I Delaware schools in which at least 51% of the student body receives free or reduced price meals. At 611. In FY17, it estimates that 600 children will receive vision exams and 408 children will receive glasses. In FY18, it estimates that 579 children will receive vision exams and 579 children will receive glasses. At 611. The cost to the State would be minimal since the current federal match is 90.94%. At 612. For example, in FY17 DMMA projects a State cost of $6,719 matched by $67,441 in federal funds. Id.

DMMA offers the following justification for the initiative:

Access to vision exams and glasses is critical for students' educational achievements and health outcomes; 80% of all learning during a child's first 12 years is visual. It comes as no surprise that students with vision problems tend to have lower academic performance, as measured by test scores and grades, and that students' performance in school impacts future employment earnings, health behaviors, and life expectancy. As such, Delaware seeks to use the health services initiative (HIS) option to improve the health of low-income children by increasing their access to needed vision services and glasses through a targeted school-based initiative.

At 611.

Since vision services would benefit low-income children, and the proposal leverages significant federal funds, the Council may wish to consider support.

4. DMMA Proposed E&D Waiver Provider Policy Manual Reg. [20 DE Reg. 612 (2/1/17)]

The Division of Medicaid & Medical Assistance proposes major revisions to its Elderly & Disabled Waiver Provider Manuel. The primary impetus for the revisions is to promote conformity with the CMS HCBS settings rule. Overall, the initiative mirrors CMS standards and provides helpful, affirmative guidance to MCOs and providers.

The committee discussed the following observations.

First, DMMA provided an early draft of the revised policy to the DLP in December, 2015 which prompted the DLP to share 3 pages of recommendations in January, 2016. The current draft reflects approximately nine (9) amendments based on the recommendations.

Second, the Elderly and Disabled Waiver no longer exists. It was merged into the DSHP+ program in 2012. The title to the Provider Manual should therefore be revised. Consistent with §1.0, the following title could be considered: "Long Term Care Community Services (LTCCS) Provider Policy Manual" or "Long Term Care Community Services/Diamond State Health Plan Plus Provider Policy Manual".

Third, §2.2.1 does not match the formatting in the balance of the section and is merely a non-directive statement. Consider the following substitute:

> 2.2.1. The LTCCS setting must be integrated and support full access of LTCCS recipients to the greater community, including...

Fourth, §§2.2.6 and 2.2.7 recite that recipients "should" have the freedom and support to control their own schedules... and be able to have visitors of their choosing at any time. This is not co-terminus with the federal regulation, 42 C.F.R. 441.530, which recites that states "must" make available a list of supports, including the following:

> Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.
>
> Individuals are able to have visitors of their choosing at any time.

For consistency with §§2.2.2-2.2.5, DMMA may wish to use the term "must" rather than "should", i.e., "individuals must have the freedom" and "individuals must be able to have visitors..."

Fifth, §3.1.5 requires providers to provide DHSS with access to participant records. DMMA may wish to consider adding a provision addressing access by DHSS authorized representatives to provider-owned or leased settings (e.g. day habilitation; adult day services) in which covered services are provided. This is a DHSS statutory right for licensed residential LTC facilities. See Title 16 Del.C. §1105(a) (5), 1107 and 1134(d) (11). However, day programs are not covered by the residential LTC statutes so DHSS may wish to include the right in the policy manual.

Sixth, DMMA should correct the grammar in §3.3.2.6. The section recites that the person centered planning process is required to include nine (9) listed features. All of the items in the list begin with a verb. Subsection 3.3.2.6 is inconsistent. See Delaware Legislative Drafting Manual, Rule 27, published at http://legis.delaware.gov/docs/default-source/Publications/legislative-drafting-manual.pdf?sfvrsn=4 .

Seventh, in §3.4.2,, DMMA should consider replacing "authority" with "authorities" since there may be more than 1 entity to which critical incidents must be reported. For example, the DHSS

PM 46 policy, §V.K.2 (Rev. 8/16) contemplates covered entities reporting to both the police and DHSS for conduct amounting to a crime. There is also overlapping jurisdiction between the Ombudsman (§3.4.2.2.2) and DLTCRP (§3.4.2.2.3).

Eighth, §§3.4.2.2.3 and 3.4.2.2.4 merit review. The committee understands that licensing of acute and outpatient health care was switched when the DPH OHFLC was placed under the DLTCRP effective July 1, 2016. See http://www.dhss.delaware.gov/dhss/dltcrp/

Ninth, DMMA may wish to add a reference to the requirement of critical incident reporting concerning patients of psychiatric hospitals and residential centers to the Protection & Advocacy agency pursuant to 16 Del.C. §5162. See also DHSS PM 46 policy, §V.K.2 (Rev. 8/16).

Tenth, §6.2, entitled "Available Services", omits some services included in the MCO contract, including minor home modifications, home-delivered meals, transition services, and nutritional supplements. Each of these services enhance community-based living as much as the listed personal emergency response system. DMMA should consider adding the omitted services.

Eleventh, §6.2.1 and 6.2.2 contain specific references to additional services for individuals with brain injuries in the contexts of adult day services and attendant services:

> Members with an acquired brain injury (ABI) or traumatic brain injury (TBI) will receive additional prompting and/or intervention as needed, and as indicated in the person-centered service plan.

This merits endorsement.

The Council may wish to share the above observations with the Division.

6. House Bill No. 14 (Motorcycle Helmets)

This legislation was introduced on December 15, 2016. As of February 5, 2017, it awaited action by the House Public Safety & Homeland Security Committee.

The bill would amend the statute to require riders of all ages to actually wear a helmet.

Similar bills have been introduced in the past. See, e.g., bills introduced in 2007 (Senate Bill No. 46); and 2015 (House Bill No. 54). The 2015 bill was not released from committee despite wide-ranging support. The State Council for Persons with Disabilities, which is statutorily designated the "primary brain injury council for the State" [29 Del.C. §8210(b)], has historically endorsed such initiatives.

If enacted, Delaware would join the majority of states in the Northeast in establishing a "universal" law requiring riders to wear helmets regardless of age. Currently, the neighboring states of New Jersey and Maryland have universal helmet laws. They are joined by New York, Massachusetts, Vermont, Virginia, West Virginia, and District of Columbia. See attachment. This leads to an

anomaly for riders in the I-95 corridor. A rider traveling from D.C. to New Jersey would be required to wear the helmet for the entire route except for Delaware.

Clinical and highway safety agency support for universal helmet laws is overwhelming. Consider the following:

> The CDC reports that helmets reduce the risk of deaths by 37% and head injuries by 69%.

The National Highway Traffic Safety Administration (NHTSA) concluded that an annual $1.1 billion could have been saved in economic costs, and $7.2 billion in comprehensive costs, if all motorcyclists wore helmets in a single year.

Advocates for Highway & Auto Safety quote a GAO report which concluded that "laws requiring all motorcyclists to wear helmets are the only strategy proved to be effective in reducing motorcyclist fatalities."

Public Health Law Research (PHLR) reviewed the results of 69 studies resulting in the following "bottom line":

> According to a Community Guide systemic review, there is substantial evidence to support the effectiveness of universal helmet laws in increasing helmet use among motorcyclists, and to support that universal helmet laws reduce deaths, injuries and economic costs attributable to motorcycle crashes. Partial laws do not achieve any reduction in deaths, injuries or costs.

Finally, the fiscal burden imposed on Delaware State government and the Medicaid program is often overlooked in considering the value of universal helmet laws. A NHTSA report based on past studies concluded as follows:

> A number of the reviewed studies examined the question of who pays for medical costs. Only slightly more than half of motorcycle crash victims have private health insurance. For patients without private insurance, a majority of medical costs are paid by the government. Some crash patients are covered directly through Medicaid or another government program. Others, who are listed by the hospital as "self-pay" status, might eventually become indigent and qualify for Medicaid when their costs reach a certain level.

NHTSA, "Costs of Injuries Resulting from Motorcycle Crashes: A Literature Review, published at https://one.nhtsa.gov/people/injury/pedbimot/motorcycle/motorcycle_html/overview.html .

The Council may wish to share the above analysis with policymakers. Parenthetically, courtesy copies of communication could be shared with the Departments of Health & Social Services, Transportation, and Safety & Homeland Security.

7. <u>House Bill No. 21 (Organ Transplant Discrimination)</u>

This legislation was introduced on January 5, 2017. It was released by the House Health & Human

Development Committee on January 18.

There is nationwide concern over disability-based discrimination in qualifying and receiving an organ transplant. Consistent with the attached articles, New Jersey enacted a ban in 2013 on discrimination in the organ transplant system based on a mental or physical disability with no significant relationship to the transplant.

H.B. No. 21 would disallow a "covered entity" from engaging in discrimination in the organ transplant system. Discrimination would include refusal to refer an individual to a transplant center, refusal to place an individual on a waiting list, or placing the individual at a lower priority position on a waiting list (lines 66-77). H.A. No. 1 was placed with the bill on January 19. It would authorize judicial enforcement by the Attorney General or an aggrieved person. Remedies would include a civil penalty and the availability of damages.

The Council may wish to consider a general endorsement of the bill with a separate communication to the prime sponsors with the following observations:

1. Lines 76-77 disallow a "covered entity" from declining "insurance coverage" for a transplant or post-transplantation care. However, the definition of "covered entity" (lines 61-64) does not cover health insurers. If the sponsor wished to reach State-regulated insurers, it may be preferable to consider amending the Insurance Code, Title 18. For example, the Insurance Code includes discrimination bans based on mental illness (18 Del.C. §§ 3343, 3576 and 3578) and pre-existing conditions (18 Del.C. §§3361 and 3573). Conceptually, a ban on insurer discrimination in organ transplants based on disability could be added to the Insurance Code.

2. The Committee identified two (2) concerns with the amendment.

A. There is a significant inconsistency between lines 5 and 17. Line 5 only authorizes an individual to file an action "for injunctive or other equitable relief" while line 17 authorizes the court to award monetary damages. This creates ambiguity in the law concerning the authority of the Chancery Court to award damages.

B. The focus of most litigants seeking to challenge discrimination under the bill would likely be injunctive relief to obtain access to a transplant rather than damages. The most critical aid in this context would be the availability of attorney's fees to a successful litigant. The availability of attorney's fees should preferably be made explicit at line 17 of HA. No. 1.

These overlapping concerns could be addressed as follows:

a. Amend line 5 as follows: "the Court of Chancery for injunctive or other equitable relief <u>authorized by subsection (c) of this section</u>.

b. Amend lines 17-18 as follows: "Award such other relief as the court considers appropriate, including monetary damages <u>and attorney's fees</u> to aggrieved persons.

8. <u>House Substitute No. 1 for House Bill No. 12 (Basic Special Education Unit)</u>

This legislation was introduced on January 5, 2017. It was released from the House Education Committee on January 18 and assigned to the Appropriations Committee on January 19. It is similar to legislation (H.B. No. 30) introduced in 2015 which was endorsed by the GACEC. The current bill however, has a more restrained fiscal note and incorporates a few technical amendments suggested by the Councils.

The bill addresses some anomalies in the current unit count system for students who qualify for special education.

First, special education students of all ages (Pre-K to 12) with "deep-end" needs are funded through "Intensive" or "Complex" units (lines 15-16). In contrast, special education students with "basic" needs are funded through the following units: Preschool (pre-kindergarten) and Basic Special Education (grades 4-12). There is an obvious gap, i.e., there is no distinct special education unit for students with basic needs in grades K-3. The K-3 special education students with basic needs are merged into a K-3 unit with all other students (line 10).

Second, the result of the above system is reduced funding for K-3 special education students with basic needs. The aberration is illustrated in the following table:

"BASIC NEEDS" SPECIAL EDUCATION STUDENT FUNDING

GRADE	UNIT COUNT (number of students needed to generate a unit)
Preschool (pre-K)	12.8
K-3	16.2
4-12	8.4

It is "odd" to have "richer" unit counts for very young (pre-K) students and students in higher (4-12) grades. Moreover, the difference in funding is dramatic. Identical K-3 students generate roughly half of the funding of the 4-12 students (16.2 versus 8.4).

The impact of the anomaly is difficult to measure. A district's duty to identify students with disabilities and provide a free, appropriate public education is not statutorily diminished by lower funding for the K-3 special education population (14 Del.C. §§3101, 3120, and 3122). However, it is logical to assume that reduced funding may influence the availability of services and supports for this cadre of students. Moreover, as highlighted in a January 25, 2017 News Journal article, the K-3 grades are critical to student success:

A 2015 study by the National Center for Analysis of Longitudinal Data in Education Research identifies grade three as a crucial pivot. Between pre-K and third grade, about 41 percent of students were able to "graduate" from special services, the study found. After grade three, only about 26 percent of students transition out. The rest remain in special education for the rest of their academic careers.

The 2015 legislation (H.B. No. 30) proposed a modification of the special education "basic" unit so grades K-3 students with a current 16.2 funding ratio would have the same 8.4 funding ratio as grades 4-12 students. The fiscal note for this initiative was approximately $11 million. The 2017 bill is more fiscally restrained. It gradually adjusts the basic special education unit count for grades K-3 over a 4-year period as illustrated in the following table:

PHASED IN "BASIC NEEDS" SPECIAL EDUCATION STUDENT FUNDING
FOR GRADES K-3

SCHOOL YEAR	UNIT COUNT	STATE SHARE OF COSTS
2017-18	14.2	$1.759 MILLION (FY18)
2018-19	12.2	$4.173 MILLION (FY19)
2019-2020	10.2	$7.636 MILLION (FY20)
2020-2021	8.4	$12.294 MILLION (FY21)

The Council may wish to share the above analysis with policymakers.

9. House Bill No. 55 (Compulsory School Attendance)

This legislation was introduced on January 25, 2017. As of February 5, it awaited action by the House Education Committee.

H.B. No. 55 would raise the compulsory school attendance age from 16 to 18 over the next few years. The compulsory attendance age would rise to 17 effective September 1, 2018 and 18 effective September 1, 2019 (lines 12-16 and 22-25). Related Code sections addressing waivers of attendance and police detention of "off campus" students are also revised. Similar or overlapping legislation is also pending. For example, H.B. No. 17 is a simpler bill which would raise the compulsory school attendance age to 17. H.B. No. 23 would require students over 16 seeking to withdraw from school to have parental consent and an exit interview.

Similar legislation (H.B. No. 244) was introduced in 2012 to increase the compulsory school attendance age from 16 to 18. At that time, the fiscal note for raising the age to 18 reflected an estimated State cost of $879,000 - $1,551,000. The 2017 legislation is earmarked for a fiscal note but it is not posted on the legislative website.

The Committee discussed the following observations on H.B. No. 55.

First, the National Center for Education Statistics table reveals that Delaware's neighboring states had the following compulsory age standards as of 2015:

- New Jersey: 16
- Pennsylvania: 17
- Maryland: 17

The overall national picture is compiled in the following table:

NCES Statistics (2015)

Compulsory Education Age	Number of States (& D.C.)
16	15
17	11
18	25

Consistent with the above statistics, Delaware is in a minority in maintaining 16 as the compulsory education age.

Second, the Councils' comments on the 2012 legislation included materials describing the pros and cons of raising the age of compulsory school attendance. National organizations have generally endorsed raising the compulsory education age if accompanied by other strategies and resources to promote student success. The 2012 commentary remains apt:

> (T)here are pros and cons to raising the compulsory school attendance age. Advantages include encouraging more students to attend college and decreasing dropout rates, juvenile crime, and teen pregnancy. Disadvantages include financial costs and devotion of resources to truancy and disruption linked to students who do not wish to be in school. For example, the NAASP statement included the following recommendation:
>
> > Provide funding for graduation coaches, counselors who focus solely on at risk students. They monitor student's academic progress and attendance and work with teachers to identify those who are falling behind or at risk of doing so. Graduation coaches also focus on getting parents involved and will make home or workplace visits with parents.

Third, the sponsors may wish to review a technical observation in the context of exemptions. A student can qualify for an exemption by having an alternative learning plan approved by the head of

the district or charter school of enrollment. However, a student's appeal of denial of a waiver is not filed with the board of the district or charter school of enrollment. It is filed with the board of the district of residence (line 50 and 62) which has had no involvement with the decision. Thus, a student who has opted for a "choice" program in a different district would submit a waiver to the "choice" district superintendent but appeal a denial to the board of the district of residence. Perhaps this is the intended model but it may merit review.

The Council may wish to consider endorsing an increase in the compulsory education age if accompanied by targeted supports such as graduation coaches.

10. House Bill No. 23 (Student Withdrawal from School)

This legislation was introduced on January 5, 2017. It was released by the House Education Committee on January 25, 2017.

The bill would explicitly condition the withdrawal of a student over the age of 16 from school prior to graduation on the following: 1) written parental consent; and 2) an exit interview. The exit interview would include disclosure of information about the effects of dropping out of school and the availability of support services to assist the student in remaining enrolled in school. The requirement of parental consent is ostensibly already required by law. See Title 14 Del.C. §2722(b):

> (b) No pupil who could otherwise legally fail to attend school pursuant to §2702(a) of this title may do so without the written consent of such person or persons having the legal control of that pupil.

The Committee discussed the following observations.

First, the requirement of an exit interview is a prudent measure which should promote informed decision-making.

Second, the sponsors may wish to consider limiting the parental consent requirement to minors. Literally, a student aged 18-21 would be required to have parental consent to withdraw from school. Since the student is an adult, requiring parental consent to withdraw from school is not appropriate. Indeed, the definition of "parent" for purposes of school attendance only extends to students under age 18. See Title 14 Del.C. §2721. Moreover, the truancy law [§2722(b)] only contemplates parental/guardian consent if there is "legal control" of a student. Finally, special education students generally assume parental rights upon attainment of age 18. See 14 Del.C. §3101(7). Cf. Title 1 Del.C. §701.

Third, there is no fiscal note accompanying the bill. The synopsis describes the intent as lowering the dropout rate and encouraging students to complete high school. Other legislation with the expected effect of deterring withdrawal from school has been accompanied by a fiscal note. See, e.g., current H.B. No. 17 and H.B. No.55.

Fourth, the sponsors may wish to consider expanding the bill to remove an existing incentive to drop out of school. Under Department of Education regulation, a student is not permitted to take a GED test unless the student has formally withdrawn from school. See 14 DE Admin Code 910. Some students who are "on the fencepost" regarding pursuit of a GED versus diploma might stay in school if allowed to pursue a GED without the necessity of dropping out. For example, some "older" students may have so few credits towards graduation that it is highly unlikely that they could qualify for a diploma by age 21.

The Council may wish to consider endorsement of the legislation subject to an amendment clarifying that parental consent is only necessary for minors.

11. House Bill No. 47 (Absentee Voting)

This legislation was introduced on January 24, 2017. As of February 5, the bill awaited action by the House Administration Committee.

The synopsis succinctly describes the purpose and effect of the bill:

This bill removes the notary requirement for requests for absentee ballots. Delaware is the only state that requires a notary to authorize a voter's affidavit for an absentee ballot. In some cases, the potential voter may have to pay for the notary and Delaware essentially charges them to vote.

The Committee discussed the following observations.

First, the legislation would benefit individuals with disabilities who may disproportionately rely on absentee ballots given variable health or difficulty traveling to polling sites.

Second, the notary requirement has already been "diluted" in the Delaware Code. Absentee ballots are authorized based on eight (8) discrete scenarios/justifications. See 15 Del.C. §5502. The Code already authorizes "self-administration" of an absentee ballot affidavit for at least half of the scenarios/justifications:

> (e) Notwithstanding any other provision of this section to the contrary, the affidavit of any elector desiring to receive an absentee ballot because the person qualifies under any of the reasons set forth in §5502 (1), (2), (4) or (7) of this title or because a person's business or occupation is providing care to his or her parent, spouse, or child who is living at home and requires constant care due to illness, disability, or injury, may be self-administered.

Title 15 Del.C. §5503. As a result, the existing process may be confusing to the public. The bill has the salutary effect of making the process for requesting an absentee ballot uniform which reduces confusion and facilitates administration by the Department of Elections.

Second, criminal penalties for submitting a false request are ostensibly still applicable. The application must be "subscribed and sworn to by the elector" (line 19). The Election Code authorizes prosecution resulting in fines and imprisonment if an individual engages in the following:

(7) Knowingly, willfully or fraudulently does any unlawful act to secure an opportunity for himself or herself or for any other person to vote.

Title 15 Del.C. §5128. Moreover, false swearing in a written instrument may qualify as perjury. See Title 11 Del.C. §§1221, 1222, and 1224.

Consistent with the above observations, the Council may wish to consider sharing positive commentary with policymakers.

MEMBERSHIP

Committee chair, Dana Levy reported that the following person has resigned from Council: Kirsten Wolfington. Danna also noted that Keith Morton was sent a letter requesting his resignation as he has not corresponded with Council or staff in many months and has moved on to a different position. Danna closed by stating that she would like the Membership committee members to see her after the meeting to arrange for a membership committee meeting.

PERSONNEL

There were no updates from the Personnel Committee.

Motion was made to adjourn. **Motion was approved** and the meeting adjourned at 8:20 p.m.